UNIPAMOL (M) SDN. BHD.

v.

ALL MALAYAN ESTATES STAFF UNION & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
WAN HAMZAH J
[ORIGINATING MOTION NO. 100 OF 1976]
25 AUGUST 1981

ADMINISTRATIVE LAW: *Order of Certiorari - Whether or not the award of the Industrial Court is subject to review - Industrial Relations Act 1967, s. 29(3)(a).*

In this case, pursuant to s. 23(2) of the Industrial Relations Act 1967, the Menteri Buruh dan Tenaga Rakyat referred to the Industrial Court a trade dispute between the applicant on the one hand and the respondents on the other. The Industrial Court made an award upgrading three employees and ordering that they be paid increased salaries from the date of upgrading. The award was made retrospective to a period more than six months earlier than the date when the dispute was referred to the Industrial Court. The applicant sought an order of *certiorari* to remove the award into Court for purposes of it being quashed.

Section 29(3)(a) of the Industrial Relations Act 1967, provides that an award of the Industrial Court shall be final and conclusive and no award shall be challenged, appealed against, reviewed, quashed or called in question in any Court of law.

The learned Judge quoted the case of *South East Asia Fire Bricks Sdn. Bhd. v. Non-Metallic Mineral Products Manufacturing Employees Union and Ors* where the Privy Council held that s. 29(3)(a) of the Industrial Relations Act 1967 effectively ousted the jurisdiction of the High Court to quash a decision of the Industrial Court by *certiorari* proceedings but the High Court can correct the error of the Industrial Court only if the Industrial Court has acted in excess of its jurisdiction. The applicant in this case had submitted nine grounds but the learned Judge dismissed all the grounds except three grounds i.e. grounds (b), (c) and (h) as only these three grounds related to the question of the jurisdiction of the Industrial Court. The learned Judge then dismissed grounds (b) and (h) because the relevant facts in support of these two grounds were not stated in the applicant's affidavits, nor could it be ascertained from the Statement of Case and Statement of Reply nor from the award. The learned Judge felt however that ground (c) had some merits. Ground (c) contended that, "in view of the provision of s. 27(7) of the Industrial Relation Act 1967 which specifically provides that an award cannot be made retrospective earlier than 6 months from the date on which the dispute was referred to the Industrial Court the applicant avers that the Court could not in any event make this award retrospective beyond the 1st of July 1974 and accordingly the entire award in *ultra vires* and bad in law". The learned Judged upheld the applicant's contention that in view of s. 27(7) the Industrial Court had no jurisdiction to make the award retrospective earlier than 6 months from the date on which the dispute was referred to the Industrial Court. The learned Judge accordingly quashed the Industrial Court's order for upgrading the three employees from 1 July 1971, 1 August 1971 and 1 October 1973 respectively. However, the learned Judge held that for the purpose of fixing their salaries it was proper to make the computation on the basis as if they had been upgraded as from those dates. This would not offend s. 27(7) of the Industrial Relation Act 1967, so long as the benefit awarded did not take effect retrospectively earlier than six months from the date of the reference of the dispute to the Industrial Court. The learned Judge ordered the award of the Industrial Court to be amended accordingly.

It is a pity that no reference was made in this case to the case of *Dunlop Estates Bhd. v. All Malayan Estates Staff Union* [1980] 1 MLJ 243 where Azmi J held that the award of the Industrial Court can in certain circumstances be made effective earlier than six months from the date of the reference to the Industrial Court. This decision was approved by the Federal Court - see [1981] 1 MLJ 249. It may be argued that that case can be distinguished as it is related to the appointment of the employee while the present case deals with upgrading after employment.

It is submitted with respect that the learned Judge was in error in ordering the order of the Industrial Court to be amended. The jurisdiction in *certiorari* is to quash the award and leave it to the Industrial Court to make a proper award in the light of the decision of the High Court. On this point, reference might be made to the decision of the Federal Court in *Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn. Bhd.* [1979] 1 MLJ 135.

Cases referred to:
Dunlop Estates Bhd. v. All Malayan Estates Staff Union [1980] 1 MLJ 243
Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn. Bhd. [1979] 1 MLJ 135

Legislation referred to:
Industrial Relations Act 1967, ss. 23(2), 27(7), 29(3)(a)

For the applicant - V.T. Nathan
For the respondents - D.P. Davier

JUDGMENT

Wan Hamzah J:

Pursuant to section 23(2) of the Industrial Relations Act 1967, by his Ketua Setiausaha's letter of 29 January l975, Menteri Buruh dan Tenaga Rakyat referred to the Industrial Court a trade dispute between the Applicant on one hand and the Respondents on the other. The Industrial Court made an award which is shown in the appendix hereto. The Applicant asks for an order of *certiorari* to remove the award into this Court for the purpose of it being quashed. Section 29(3)(a) provides that an award of the Industrial Court shall be final and conclusive and no award shall be challenged, appealed against, reviewed, quashed or called in question in any Court of law, and this section is the subject matter of consideration and interpretation by the Privy Council in the well known case of *South East Asia Fire Bricks Sdn. Bhd. v. Nonmetallic Mineral Products Manufacturers Employees Union and Others.* In that case the Privy Council held that s. 29(3)(a) effectively ousted the jurisdiction of the High Court to quash a decision of the Industrial Court by *certiorari* proceedings but the High Court can correct the error of the Industrial Court only if the latter has acted in excess of its jurisdiction. The Applicant submits nine grounds on which it contends that the award of the Industrial Court should be quashed. Out of these, only three grounds relate to the jurisdiction of the Industrial Court, i.e. grounds (b), (c) and (h). Therefore I dismiss the other grounds as being of no merit, and I shall discuss only the three grounds which relate to the jurisdiction of the Industrial Court.

It is convenient to consider the following grounds (b) and (h) together:

> (b) That the Industrial Court acted in excess of its jurisdiction up-grading the claimants to the position of monthly - rated permanent staff' from 1.7.1971, 1.8.1971 and 1.10.1973 respectively, and awarding them increased salaries back-dated to points of time well beyond the time frame in which the claims were made.

(h) That the Industrial Court erred in law in failing to appreciate that an up-grading could in the nature of things only be subsequent to a demand therefore and that an alteration in terms and conditions could only follow such up-grading and could not be retro-actively applied over a period of time when both parties had signed and accepted the terms and conditions under which the employees had served.

I agree that the Industrial Court has no jurisdiction to award benefits in respect of any time outside the period in respect of which the dispute has arisen. But in the Applicant's affidavits the period to which the dispute relates is not stated, Neither can the period be ascertained from the Statement of Case and Statement of Reply, nor from the letter of award. The burden is on the Applicant to furnish evidence showing the period. Therefore I dismiss grounds (b) and (h).

Ground (c) is stated as follows:

That in view of the provision of s. 27(7) of the Industrial Relations Act 1967 which specifically provides that an award cannot be made retrospective earlier than 6 months from the date on which the dispute was referred to the Industrial Court the Applicant avers that the Court could not in any event make this award retrospective beyond the 1st of July 1974 and accordingly the entire award is ultra vires and bad in law.

I uphold the Applicant's contention that in view of s. 27(7) the Industrial Court has no jurisdiction to make the award retrospective earlier than 6 months from the date on which the dispute was referred to the Industrial Court. The letter by which the dispute was referred to the Industrial Court was dated 29 January l975. Therefore the award can be made retrospective to 29 July 1974 only. Hence I order that paragraphs 1, 2 and 3 of the award should be amended so as to read as follows:

Paragraph 1. Mrs. R. Raneeammal should be paid salary as a monthly-rated permanent staff on the salary scale of Grade III staff, according to the 1971 Agreement, at the following rate:

(i) from 29.7.1974 .. $265/- per month

(ii) from 1.7.1975 .. $280/- per month

(iii) from 1.7.1976 .. $295/- per month.

Paragraph 2. Miss Thanalakshmi @ Vasanthi should be paid salary as a monthly-rated staff on the salary scale of Grade III staff, according to the 1971 Agreement, at the following rate:

(i) from 29.7.1974 .. $250/- per month

(ii) from 1.8.1974 .. $265/- per month

(iii) from 1.8.1975 .. $280/- per month

(iv) from 1.8.1976 .. $295/- per month.

Paragraph 3. Miss Koh Poh Choo should be paid salary as a monthly-rated permanent staff on the salary of Grade III staff, according to the 1971 Agreement, at the following rate:

(i) from 1.10.1974 .. $235/- per month

(ii) from 1.10.1975 .. $250/- per month

(iii) from 1.10.1976 .. $265/- per month.

One effect of this amendment is to quash the Industrial Court's order for upgrading the three employees with retrospective effect from 1 July 1971, 1 August 1971 and l October l973 respectively. But for the purpose of fixing their salaries as at 29 July 1974 in my opinion is proper to make the computation (as the Industrial Court did) on the basis as if they had been upgraded as from 1 July 1971, 1 August 1971 and 1 October 1973 respectively. In my opinion to make the computation on that basis does not offend s. 27(7) so long as the benefit awarded does not take effect retrospectively earlier than 29 July 1974.

Also found at [1983] CLJ 83